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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Bermudez
(Principal coauthor: Senator Figueroa)
(Coauthors: Assembly Members Koretz, Maze, and Tran)

January 17, 2006

An act to amend Section 5050 of, ~~to amend, repeal, and add Section 5054 of,~~ to add Sections 5035.3, 5050.1, 5050.2, ~~and 5096.13~~ *5096.13, 5096.14, and 5096.15* to, and to add and repeal Section 5096.12 of, the Business and Professions Code, relating to accountancy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Bermudez. Accountancy: licensure.

Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy, in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a

practice privilege, as specified. A violation of this provision is a crime.

This bill would provide that the prohibition against practicing accountancy in California without a license does not apply to a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country to the extent that he or she is temporarily practicing in this state incident to an engagement in that country, provided that the temporary practice is regulated by the foreign country and performed under the accounting or auditing standards of that country and that the person does not hold himself or herself out as being the holder of a California license or practice privilege. The bill would also, until January 1, 2011, provide that the prohibition against practicing accountancy in California without a license does not apply to a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to the extent that the practice is *temporary and* incident to practice in that state, provided that the person or firm does not solicit clients in California and does not assert or imply licensure in California.

~~Existing law authorizes a licensed accountant or accounting firm from another state that does not physically enter California, does not solicit California clients, and does not assert or imply licensure in California to prepare individual or estate tax returns for natural persons who are or were California residents. A violation of these provisions is a crime.~~

~~This bill would, until January 1, 2011, instead authorize an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state to provide tax services without California licensure or a practice privilege. The bill would prohibit the foreign licensee from physically entering California to practice public accountancy, from soliciting California clients, and from asserting or implying licensure in California.~~

Existing law authorizes an individual whose principal place of business is not in California and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in California under a practice privilege if certain conditions are met, including notification to the board of intent to practice.

This bill would, until January 1, 2011, permit a certified public accounting firm authorized to practice in another state that does not

have an office in this state to practice public accountancy in California through the holder of a practice privilege if certain conditions are met. The bill would require a notification of intent to practice under a practice privilege to include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

This bill would provide that a person who engages in accountancy in California is deemed to have consented to the jurisdiction of the board and is deemed to have appointed the regulatory agency of his or her state or foreign jurisdiction as the person's agent for a service of process in actions or proceedings by or before the board. The bill would, until January 1, 2011, authorize the board to revoke, suspend, issue a fine, or otherwise restrict an authorization to practice granted to a foreign accounting firm or discipline the holder of that authorization for any act that would be a violation of, or would be grounds for discipline against a licensee or *holder of a practice privilege*—holder or denial of an accountancy license or practice privilege under, the Business and Professions Code. The bill would allow an application for reinstatement to practice, as specified. ~~The bill would also, and would allow the board to administratively suspend an authorization to practice. The bill would also require the board to amend certain regulations, as specified.~~

Because this bill would subject additional persons to requirements within the licensing provisions, the violation of which ~~are~~ is a crime, and because the bill would create new requirements and prohibitions within the licensing provisions, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5035.3 is added to the Business and
2 Professions Code, to read:

3 5035.3. For purposes of subdivision (b) of Section 5050 and
4 Sections 5054 and 5096.12, “firm” includes any entity that is
5 authorized or permitted to practice public accountancy as a firm
6 under the laws of another state.

7 SEC. 2. Section 5050 of the Business and Professions Code is
8 amended to read:

9 5050. (a) Except as provided in subdivisions (b) and (c) of
10 this section, in subdivision (a) of Section 5054, and in Section
11 5096.12, no person shall engage in the practice of public
12 accountancy in this state unless the person is the holder of a valid
13 permit to practice public accountancy issued by the board or a
14 holder of a practice privilege pursuant to Article 5.1
15 (commencing with Section 5096).

16 (b) Nothing in this chapter shall prohibit a certified public
17 accountant, a public accountant, or a public accounting firm
18 lawfully practicing in another state from temporarily practicing
19 in this state incident to practice in another state, provided that an
20 individual providing services under this subdivision may not
21 solicit California clients and may not assert or imply that the
22 individual is licensed to practice public accountancy in
23 California. A firm providing services under this subdivision that
24 is not registered to practice public accountancy in California may
25 not solicit California clients and may not assert or imply that the
26 firm is licensed to practice public accountancy in California. This
27 subdivision shall become inoperative on January 1, 2011.

28 (c) Nothing in this chapter shall prohibit a person who holds a
29 valid and current license, registration, certificate, permit, or other
30 authority to practice public accountancy from a foreign country,
31 and lawfully practicing therein, from temporarily engaging in the
32 practice of public accountancy in this state incident to an
33 engagement in that country, provided that:

34 (1) The temporary practice is regulated by the foreign country
35 and is performed under accounting or auditing standards of that
36 country.

37 (2) The person does not hold himself or herself out as being
38 the holder of a valid California permit to practice public

1 accountancy or the holder of a practice privilege pursuant to
2 Article 5.1 (commencing with Section 5096).

3 SEC. 3. Section 5050.1 is added to the Business and
4 Professions Code, to read:

5 5050.1. (a) Any person that engages in any act that is the
6 practice of public accountancy in this state consents to the
7 personal, subject matter, and disciplinary jurisdiction of the
8 board. This subdivision is declarative of existing law.

9 (b) Any person engaged in the practice of public accountancy
10 under subdivision (a) is deemed to have appointed the regulatory
11 authority of the state or foreign jurisdiction that issued the
12 person's permit, certificate, license or other authorization to
13 practice as the person's agent on whom notice, subpoenas, or
14 other process may be served in any action or proceeding by or
15 before the board against or involving that person.

16 SEC. 4. Section 5050.2 is added to the Business and
17 Professions Code, to read:

18 5050.2. (a) The board may revoke, suspend, issue a fine
19 pursuant to Article 6.5 (commencing with Section 5116), or
20 otherwise restrict or discipline the *holder of an* authorization to
21 practice under subdivision (b) or (c) of Section 5050, subdivision
22 (a) of Section 5054, or Section 5096.12 ~~of a person~~ for any act
23 that would be a violation of this code or ~~ground~~ *grounds* for
24 discipline against a licensee or holder of a practice privilege, or
25 ground for denial of a license or practice privilege under this
26 code. The provisions of the Administrative Procedure Act,
27 including, but not limited to, the commencement of a disciplinary
28 proceeding by the filing of an accusation by the board shall apply
29 to this section. Any person whose authorization to practice under
30 subdivision (b) or (c) of Section 5050, subdivision (a) of Section
31 5054, or Section 5096.12 has been revoked may apply for
32 reinstatement of the authorization to practice under subdivision
33 (b) or (c) of Section 5050, subdivision (b) of Section 5054, or
34 Section 5096.12 not less than one year after the effective date of
35 the board's decision revoking the authorization to practice unless
36 a longer time, not to exceed three years, is specified in the
37 board's decision revoking the authorization to practice.

38 (b) The board may administratively suspend the authorization
39 of any person to practice under subdivision (b) or (c) of Section
40 5050, subdivision (a) of Section 5054, or Section 5096.12 for any

1 act that would be grounds for administrative suspension under
2 Section 5096.4 utilizing the procedures set forth in that section.

3 ~~SEC. 5. Section 5054 of the Business and Professions Code is~~
4 ~~amended to read:~~

5 ~~5054. (a) An individual or firm holding a valid and current~~
6 ~~license, certificate, or permit to practice public accountancy from~~
7 ~~another state may provide tax services without obtaining a permit~~
8 ~~to practice public accountancy issued by the board under this~~
9 ~~chapter or a practice privilege pursuant to Article 5.1~~
10 ~~(commencing with Section 5096) subject to the restrictions in~~
11 ~~paragraph (1) or paragraph (2):~~

12 ~~(1) If the firm is not registered in California, all of the~~
13 ~~following restrictions apply to the practice of public accountancy~~
14 ~~under this section:~~

15 ~~(A) The individual or firm shall not physically enter California~~
16 ~~to practice public accountancy pursuant to Section 5051.~~

17 ~~(B) The individual or firm shall not solicit California clients.~~

18 ~~(C) The individual or firm shall not assert or imply that the~~
19 ~~individual or firm is licensed or registered to practice public~~
20 ~~accountancy in California.~~

21 ~~(2) If the firm is registered in California, all of the following~~
22 ~~restrictions apply to the practice of public accountancy under this~~
23 ~~section:~~

24 ~~(A) The individual shall not physically enter California to~~
25 ~~practice public accountancy pursuant to Section 5051.~~

26 ~~(B) The individual shall not solicit California clients.~~

27 ~~(C) The individual shall not assert or imply that he or she is~~
28 ~~licensed or registered to practice public accountancy in~~
29 ~~California.~~

30 ~~(b) The board may, by regulation, limit the nature and quantity~~
31 ~~of tax services provided pursuant to subdivision (a).~~

32 ~~(c) This section shall become inoperative on January 1, 2011,~~
33 ~~and as of that date is repealed.~~

34 ~~SEC. 6. Section 5054 is added to the Business and~~
35 ~~Professions Code, to read:~~

36 ~~5054. (a) Notwithstanding any other provision of this~~
37 ~~chapter, an individual or firm holding a valid and current license,~~
38 ~~certificate, or permit to practice public accountancy from another~~
39 ~~state may prepare tax returns for natural persons who are~~
40 ~~California residents or estate tax returns for the estates of natural~~

1 persons who were clients at the time of death without obtaining a
2 permit to practice public accountancy issued by the board under
3 this chapter or a practice privilege pursuant to Article 5.1
4 (commencing with Section 5096) provided that the individual or
5 firm does not physically enter California to practice public
6 accountancy pursuant to Section 5051, does not solicit California
7 clients, and does not assert or imply that the individual or firm is
8 licensed or registered to practice public accountancy in
9 California.

10 (b) The board may, by regulation, limit the number of tax
11 returns that may be prepared pursuant to subdivision (a).

12 (e) This section shall become operative on January 1, 2011.

13 ~~SEC. 7.~~

14 *SEC. 5.* Section 5096.12 is added to the Business and
15 Professions Code, to read:

16 5096.12. (a) A certified public accounting firm that is
17 authorized to practice in another state and that does not have an
18 office in this state may engage in the practice of public
19 accountancy in this state through the holder of a practice
20 privilege provided that:

21 (1) The practice of public accountancy by the firm is limited to
22 authorized practice by the holder of the practice privilege.

23 (2) ~~The~~ A firm that engages in practice under this section is
24 deemed to consent to the personal, subject matter, and
25 disciplinary jurisdiction of the board with respect to any practice
26 under this section.

27 (b) The board may revoke, suspend, issue a fine pursuant to
28 Article 6.5 (commencing with Section 5116), or otherwise
29 restrict or discipline the firm for any act that would be grounds
30 for discipline against a holder of a practice privilege through
31 which the firm practices.

32 (c) This section shall become inoperative on January 1, 2011,
33 and as of that date is repealed.

34 ~~SEC. 8.~~

35 *SEC. 6.* Section 5096.13 is added to the Business and
36 Professions Code, to read:

37 5096.13. The notification of intent to practice under a practice
38 privilege pursuant to Section 5096 shall include the name of the
39 firm, its address and telephone number, and its federal taxpayer
40 identification number.

1 SEC. 7. Section 5096.14 is added to the Business and
2 Professions Code, to read:

3 5096.14. The board shall amend Section 30 of Article 4 of
4 Division 1 of Title 16 of the California Code of Regulations to
5 extend the current “safe harbor” period from December 31,
6 2007, to December 31, 2010.

7 SEC. 8. Section 5096.15 is added to the Business and
8 Professions Code, to read:

9 5096.15. It is the intent of the Legislature that the board
10 adopt regulations providing for a lower fee or no fee for
11 out-of-state accountants who do not sign attest reports for
12 California clients under the practice privilege. These regulations
13 shall assure that the practice privilege program is adequately
14 funded.

15 SEC. 9. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the
20 penalty for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition of a
22 crime within the meaning of Section 6 of Article XIII B of the
23 California Constitution.

24 SEC. 10. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety
26 within the meaning of Article IV of the Constitution and shall go
27 into immediate effect. The facts constituting the necessity are:

28 In order that accountants licensed by another jurisdiction be
29 permitted to lawfully provide services to their clients in
30 California as soon as possible, it is necessary that this bill take
31 effect immediately.